

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:23-cv-00078-RJC-SCR**

GERALD T. MESCALL,

Plaintiff,

vs.

**UNITED STATES DEPARTMENT
OF TREASURY, et al.,**

Defendants.

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ORDER

THIS MATTER is before the Court on its review of the docket in this matter.

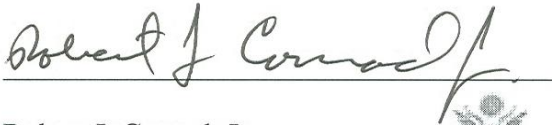
Pro se Plaintiff seeks to proceed with this civil action without having to prepay costs associated with prosecuting the matter. The Court denied Plaintiff's original, amended, and second amended motions to proceed in forma pauperis in this matter for the reasons stated in the Court's Orders. [Docs. 3, 5, 7]. On April 13, 2023, the Court ordered Plaintiff to pay the filing fee within 21 days if he wished to proceed with this action. [Doc. 7 at 3]. On May 1, 2023, rather than pay the filing fee, Plaintiff appealed the Court's Order requiring him to pay the filing fee. [Doc. 8].

Generally, "the filing of a timely and sufficient notice of appeal immediately transfers jurisdiction of all matters relating to the appeal from the district court to the court of appeals." Hunter v. Town of Mocksville, 271 F.Supp.3d 787 (M.D.N.C. Sept. 21, 2017) (quoting Grand Jury Proceedings Under Seal v. United States, 947 F.2d 1188, 1190 (4th Cir. 1991)). "Nonetheless, a district court retains jurisdiction to act in three discreet circumstances: (1) when a matter is not related to the issue involved in the appeal; (2) when the order appealed is not appealable or is clearly frivolous; and (3) when a district court's action would aid in the appeal." In re Bryant, 175

B.R. 9, 11-12 (W.D. Va. Nov. 2, 1994). To aid in the appeal, the Court will dismiss this action without prejudice for Plaintiff's failure to prosecute.

IT IS, THEREFORE, ORDERED that this action is **DISMISSED without prejudice**.

Signed: May 15, 2023

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

